

03-1238 IBP, INC. V. ALVAREZ

DECISION BELOW: 339 F3d 894

LOWER COURT CASE NUMBER: 02-35042, 02-35110

QUESTION PRESENTED:

Section 4(a) of the Portal-to-Portal Act of 1947 provides an exception to an employer's obligation to pay wages under the Fair Labor Standards Act of 1938 ("FLSA"), for time an employee spends "walking. ..to and from the actual place of performance of the principal activity or activities which such employee is employed to perform" and for "activities which are preliminary or postliminary to said principal activity." 29 U.S.C. § 254(a) Sec. 3(o) of the FLSA expressly excludes from payment "any time spent in changing clothes. ..at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement." *Id.* § 203(o). The questions presented are:

(1) Whether walking that occurs between compensable clothes-changing time and the time employees arrive at or depart from their actual work stations constitutes non-compensable "walking. ..to and from the actual place of performance of the principal activity" within the meaning of Section 4(a).

(2) Whether, after *United States v. Mead*, 533 U.S. 218 (2001), deference is due the Department of Labor's interpretation of the term "clothes" in Section 3(o), when that interpretation is embodied in an opinion letter issued by the Administrator of the Department's Wage and Hour Division, who is charged with administering and enforcing the FLSA, when Congress has provided that third parties may rely on such opinion letters, and when the opinion letter itself restores the agency's prior position?

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION. CONSOLIDATED WITH 04-66 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 2/22/2005